IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPEALLTE JURISDICTION.

CRIMINAL APPEAL NO. 704 OF 2003

Shrikant Hanmant Bijargi ....
Appellant. V/s
(Orig.accd.)
The State of Maharashtra ....
Respondents.

Mr.D.N.Salvi, Adv. for the appellant.

Mr.V.B.K.Deshmukh, APP for the State.

CORAM: V.G. PALSHIKAR
AND
SMT.NISHITA MHATRE, J.

20th Nov., 2006.

ORAL JUDGMENT: (Per Palshikar, J.)

Being aggrieved by the judgment and order of conviction and sentence passed by the learned 1st Adhoc Additional Sessions Judge, Sangli, in Sessions Case No.154 of 2002 on 3.04.2003 the appellant-accused has preferred this appeal on the grounds mentioned in the memo of appeal as also verbally canvassed before us.

2. With the assistance of the learned Advocate for the appellant and the Public Prosecutor for the State we have scrutinized the entire evidence on record and reappreciated the same.

3. The prosecution case is that the deceased Shobha Shrikant Bijaragi was residing with accused Shrikant in Vadar colony at Sangli.

Previously, she was married with one Rama Pawar and her marriage was solemnized as long as 11 years back. Initially, she was residing with her first husband Rama but during last 9 years she was residing with accused Shrikant as his wife. Deceased Shobha is having son viz. Sagar from her first husband who was also residing with deceased Shobha and accused Shrikant in the same house. Accused Shrikant is also married having wife and children and he was residing with them at Waranali in Sangli. He used to visit his wife and children frequently. However he was suspecting fidelity of deceased Shobha and was saying that she had kept sexual relations with other person. On that count he used to quarrel and abuse deceased Shobha. During one month prior to the incident, he was insisting Shobha to vacate the house taken by accused on rent basis and was threatening her to kill. Deceased Shobha had narrated this fact to her parents and her brother who are also residing at Vadar colony in Sangli. They instructed accused Shrikant not to ill treat Shobha but he continued the ill treatment.

4. On 27.7.2002 Shrikant came to Shobha at 8.00 p.m. At that time Shobha and her son Sagar were in the house. He again insisted Shobha to vacate the house and threatened her to kill. He took quarrel with Shobha and went out of the house. He again came back at 11.00 p.m. And knocked the door of the house. Shobha opened the door.

Sagar who was sleeping in the house woke up. Accused Shrikant again took up quarrel with Shobha suspecting her character. He threated her to kill as she did not vacate the house. He took plastic can containing kerosene and poured kerosene on the person of Shobha. He set her on fire with the help of match stick. Shobha started shouting. At that time her son Sagar opened the door and went out of the house. The fire was set off. Shobha was taken to Civil hospital, Sangli for medical treatment. The dying declaration was recorded by PHC Subhash Koli (P.W.3) at 1.55 a.m. In presence of Medical Officer. When, she was admitted in the hospital, she herself gave history that her husband poured kerosene and set her on fire and said history as entered in the medical record. On the basis of dying declaration (Exh.15) Crime No.158/2002 was registered at Vishrambhag Police Station, Sangli under section 307, 5050 of Indian Penal Code.

5. The police accordingly investigated the case. The accused was charged under section 302 of Indian Penal Code for having committed murder of Shobha. The prosecution examined as many as eight witnesses to prove its case. Appreciating the evidence on record the learned trial Judge convicted the appellant as mentioned above. This appeal is directed against that order of conviction and sentence. The learned counsel appearing on behalf of the appellant assailed the order on various grounds. Stated briefly they are as follows:

i) The evidence of PW1 Sagar should not be treated as an eye witness account as his conduct was wholly unnatural and therefore he is not an eye witness at all;

ii) PW1 Sagar should be disbelieved as his conduct is unnatural in as much as he did not disclose the assault seen by him even to the neighbours;

iii) The dying declaration is liable to be rejected as the victim was burnt 97% and could not have been in position to give statement.

6. These submissions were countered by the Additional Public Prosecutor stating that the victim was mother of the witness and the accused was the father. The witness was therefore in shock when he saw the incident and therefore his subsequent conduct cannot be called unnatural or his non disclosure cannot be given undue weight so as to disbelieve him. It was then contended by the learned public prosecutor that evidence of PW5-Dr.Archana and PW6-Dr.Jagtap clearly proves the dying declaration as one made in the presence of the doctor when the patient was in condition, both physical and mental, to give the statement. We have to examine these contentions in the light of the evidence as reappreciated by us.

7. PW3-Subhash Koli is the police head constable who recorded the dying declaration of the victim. He has clearly deposed that Dr.Jagtap

came to the burn ward and he personally examine the patient, he made endorsement to that effect. The witness also asked the patient about her condition and then proceeded to record the dying declaration. The witness has been duly cross examined and there is nothing in his cross examination to require his evidence to be rejected. His evidence is further corroborated by the testimony of PW5-Dr.Archana who admitted the victim to the hospital and was told by the victim that her burns were due to her husband setting her on fire.

8. Exhibit 27 is the dying declaration duly proved by PW6-Dr.Jagtap during his deposition. A scrutiny of the dying declaration shows that there was a clear endorsement by the doctor on the dying declaration before recording the same on a piece of paper was started. The victim has given clear account of how she was ill treated and bunt. She has also mentioned that she shouted and at that time her son ran out of the room. This statement of her's proves that PW1 Sagar was in the room as he claims to be. There is also enough intrinsic evidence on record to prove the implicitly of the accused in the offence. The testimony of the doctor and the police who recorded the dying declaration corroborate each other and prove that dying declaration was really recorded by the constable when the patient was in fit condition to make statement. Endorsement to that effect is already observed on the dying declaration. In such circumstances there is no

reason why ocular testimony of PW1 Sagar duly corroborated by dying declaration and testimonies of the doctor and the constable who wrote the dying declaration should be rejected.

9. We have also scrutinized the order as passed by the learned trial Judge. He has properly appreciated the evidence on record and has correctly found accused guilty of murder. We endorse all the findings recorded by the learned trial Judge as we on reappreciation of the evidence are also of the same conclusions. The accused had the intention and motive to kill the victim. He had the opportunity to do so and the prosecution has proved that he has done so. In such circumstances we see no merits in this appeal. Hence the appeal fails and is dismissed.